



INTERNATIONAL CONFERENCE ON THE QUESTION OF JERUSALEM

“The Question of Jerusalem after 50 years of Occupation and 25 years of the Oslo Accords”

Rabat, 26 - 28 June 2018

CHECK AGAINST DELIVERY

PLENARY II

The Question of Jerusalem in international law and Member States' obligations

International law provisions applicable to the question of Jerusalem

Paper presented by

Mr. Ziad Abuzayyad
Former Minister for Jerusalem Affairs

THE LEGAL STATUS OF JERUSALEM UNDER INTERNATIONAL LAW

ZIAD ABUZAYYAD

INTRODUCTION:

Public international law refers to those laws, rules, and principles of general application that deal with the conduct of nation states and international organizations among themselves, as well as the relationships between nation states, and international organizations with natural and juridical persons.

The public international law aims to monitor the behavior between states, since where there exists a community of states, the maintaining of law and order becomes essential.

The primary forum for the creation of public international law is inter-governmental organizations like United Nations through the codification of customary law. The UN develops, creates and enforces international law on many levels.

The UN Charter contains a supremacy clause that makes it the highest authority of international law. The clause states that the UN Charter shall prevail in the event of a conflict between the obligations of the members of the United Nations under the present charter and their obligations under any other international agreement (art.103).

The General Assembly and the Security Council are the components of the organization that are most involved in lawmaking and legislative activities.

Though the General Assembly lacks formal legislative authority to adopt resolutions that are binding on its members, it is highly active in the making and development of international law.

The General Assembly has originated much of the existing international legislation, and some of its resolutions are now accepted as customary in international law, such as the UNIVERSAL DECLARATION OF HUMAN RIGHTS.

The resolutions adopted by the General Assembly, albeit formally considered non-binding, have legal character and contribute significantly to the development of international law.

The Security Council on the other hand, has the authority to adopt binding decisions and non-compliance with these decisions constitutes a violation of the UN Charter.

This presentation will examine the legal status of Jerusalem under the international law represented by the legislative role of the United Nations, and in the light of relevant UNSC, and General Assembly resolutions.

Jerusalem: Historical background

Founded by the Canaanites around 1800 B.C., occupied by King David eight centuries later, destroyed by the Babylonians in 587 B.C., Jerusalem was then successively occupied by the Persians, the Greeks, the Romans (both pagan and Christians), the Arabs, the Turks and the British.

It is unique among the cities of the world because of its association with the three monotheistic religions, which have their Holy Places in it. As a result, it is of a profound religious and spiritual significance to more than 2.4 Billion Christians, 1.8 Billion Muslims and 14.5 Million Jews¹.

UNGA and Jerusalem

¹Cattan, H., (Spring) 1981. *Journal of Palestine Studies*, Vol. 10(No. 3).

The General Assembly resolution 181² of Nov. 29th, 1947, known as the Partition Resolution, divided historical Palestine into two states: Jewish and Arab, and Jerusalem was given a special status, defined as “Corpus-Separatum”, an independent international entity, governed under special international system and this status did not change since then.

The borders of Jerusalem according to this resolution included the Old City of Jerusalem, and its neighborhoods that reached to the east Abu Dies, south to Bethlehem, west to Ein Karem, and north to Shuafat.

Despite the outbreak of hostilities in 1948-49 the United Nation made several attempts to establish the International Regime before giving up in 1951 after Israel moved its parliament, the Knesset, to West Jerusalem, and Jordan set up institutions in East Jerusalem. But the UN Resolution 181 remains on the table in the sense that it remains one of the future options in the negotiations on the final status of Jerusalem.

Israel's occupation of West Jerusalem since 1948 has not been recognized de jure, although most states recognize Israel's de facto authority over West Jerusalem. The 1949 Israel – Jordan Armistice Agreement endorsed the de facto division of the city but did not affect the legal status of the City³.

However, despite the UNGA resolution, during the years 1948-49 the status of Jerusalem was violated with military force and the city became divided by military rule between two states with closed borders. This division had its official context in the General Armistice Agreement between the Hashemite Kingdom of Jordan and Israel 1949⁴.

In between 1948- 1967

Israel tried continuously since its creation in 1948 to violate the international status of Jerusalem. In that period, the Israeli authorities

²City of Jerusalem: Special Regime, pp 146-150, ANNEX A, ANNEX B,
[http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/181\(II\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/181(II))

³Fouloy, C. D. D., 2017. *Association of Accredited Public Policy Advocates to European Union*. [Online]
Available at: <http://www.aalep.eu/jerusalem-under-international-law>

⁴General Armistice Agreement between the Hashemite Jordan Kingdom and Israel 1949,
<https://unispal.un.org/DPA/DPR/unispal.nsf/0/F03D55E48F77AB698525643B00608D34>

established the Israeli Supreme Court in Jerusalem, and on February 1949 the Israeli Knesset convened in the Jewish Agency building in West Jerusalem where the Israeli president gave his presidential oath. The UN AD HOC committee on the Palestinian Question (*UNGA 194 (III) progress report of the United Nations Mediator*⁵) was informed about the Israeli measures in Jerusalem such as establishing ministerial bodies inside the borders that were supposed to be part of the “international governance of Jerusalem”, and the UN Ad Hoc Committee addressed the Israeli prime minister with a letter that such acts are in violation of the UN General Assembly resolution.

Despite the general armistice agreement, the international community kept the legal status of Jerusalem in accordance with the UN resolution 181, and its legal implications were considered within its context.

Israeli measures to integrate West Jerusalem into Israel, and the measures taken by Israel following the occupation of East Jerusalem in the June 1967 war, to assert sovereignty over all Jerusalem, have been repeatedly condemned by the UN and are of no legal effect.

Israel is in belligerent occupation of East Jerusalem. And under international law, belligerent occupation cannot confer title. The principle of inadmissibility of acquisition of land by force is stated in UN Resolution 242, Nov. 22nd, 1967 in regard to territories occupied in 1967 war including East Jerusalem.

Therefore, prior to 1967 no state moved its embassy to Jerusalem, the status of the Consulate General offices in Jerusalem was considered (*suigeneris*) meaning without any legal form and they were known back then as representative consulates to the (*Corpus Separatum*), 9 Consulate General offices were in both East and West Jerusalem, six of them in East Jerusalem, and these offices didn't recognize sovereignty on both sides.

In contrast to the Consulate General offices in Israel, consuls in West Jerusalem didn't submit their assigning papers to Israeli foreign ministry, or diplomatic assigning papers from the president

⁵[http://undocs.org/A/RES/194%20\(III\)](http://undocs.org/A/RES/194%20(III))

of the state. They had no official relations with the Israeli government and diplomatic protocol maintained the unrecognizing of Israeli sovereignty over the city. The same attitude was applied in East Jerusalem. Consuls didn't submit their assigning papers to the Jordanian foreign ministry or the King. They had no official relations with the Jordanian government and diplomatic protocol maintained the unrecognizing status. Consul Generals in Jerusalem were and still are reporting directly to the Ministries of Foreign Affairs in their countries and not to the Embassies in Tel Aviv or Amman. This situation is still valid for all Consulates in Jerusalem including the US Consulate until this moment, in spite of the decision to move the American Embassy from Tel Aviv to Jerusalem.

After the Israeli occupation of the Palestinian lands of the West Bank including East Jerusalem, and the Gaza Strip as a result of the June 1967 war, Israel established its authority over these areas as an occupying force, making substantial geographic and demographic changes by force of military occupation.

On the 27th June 1967 Israel unilaterally extended its jurisdiction and legal constituency over East Jerusalem, including the Old City of Jerusalem, expanding the municipal borders of the city to include the surrounding neighborhoods of Sur Baher, Qalandia airport, Jabal Al-Mukabber and Shuafat in violation of the UN resolution 181 and 242.

And on the 29th June 1967 an Israeli military order was issued dissolving the elected Municipal Council of Arab Jerusalem that was composed of 12 members. All were exempted of their tasks, and the elected Arab Mayor of Jerusalem, Rauhi al Khatib, was expelled to Jordan.

UN Ambassador Thalmann's mission report⁶ confirmed that Palestinian residents of Jerusalem expressed their rejection to the sovereignty of Israel over Jerusalem and considered its occupation as a violation of international law that forbids the occupation force from changing the jurisdiction of the occupied territory and prohibits confiscation of

⁶Mission of Personal Representative in Jerusalem – SecGen report under A/RES/2254 (ES-V)

<https://www.un.org/unispal/document/mission-of-personal-representative-in-jerusalem-secgen-report-under-a-res-2254-es-v/>

property and violations of rights of the people it occupies. It was confirmed several times that the Arab residents of Jerusalem never had the chance to declare by themselves if they are willing to live in an Israeli state and that self-determination according to the UN charter and the international declaration of human rights was violated by the Israeli occupation.

Following the defeat of 1967, some marginal states moved their embassies to Jerusalem, whereas **the permanent five states represented at the Security Council refrained from doing so based on the political and legal implications respecting their obligation to UN resolution 181 of November 1947.**

Undoubtedly, the international community represented by the UN Security Council, and the many UNSC/UNGA resolutions are a proof that throughout the years, it never accepted the Israeli practices that changed the demographic, geographical, and political status of Jerusalem, or its legal status by building Jewish settlements, or expelling its Arab inhabitants. All these measures were considered illegal.

UNSC and Jerusalem

After the Israeli occupation of 1967, the UN Security Council adopted numerous resolutions related to the legal status of Jerusalem and the occupied territories and rejected the Israeli practices and measures that violate its resolutions, declared upon all these measures as null and void, and demanded Israel to refrain from changing the status and image of the city of Jerusalem. These are some examples example:

- **UN Security Council Resolution 242⁷ of 1967**, that emphasized the principle of the inadmissibility of the acquisition of territory by war and delegitimized the occupation of others lands by military force and demanded the Israeli withdrawal of the lands it occupied in 1967.

⁷http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/242%281967%29

- That was followed by **the UNSC Resolution 252**⁸(21 May 1968) that de-legalized the Israeli measures that changed the legal and administrative status quo of the occupied territories. The council demanded that Israel abolish these changes, especially the Israeli announcement of Jerusalem as the capital of Israel in violation of the UNGA resolution 181, and to stop its hostilities.
- **UNSC Resolution 267**⁹ (3rd July 1969) reaffirmed the validity of the UNSC Resolution 252 and called on Israel to rescind measures of annexation of East Jerusalem, and reproached Israel for failing to implement the UNSC resolutions by halting its measures in Jerusalem, especially the confiscation of Palestinian lands and properties and referred that the UNSC might take measures against such acts if Israel didn't comply with the UNSC resolutions.
- **UNSC Resolution 298**¹⁰(25th September 1971) was clearer in addressing the Israeli violations especially the confiscation of Palestinian lands and properties and the issuing of legislation to annex occupied territories under Israeli control, whereas the UNSC considered such actions void and that the legal status of Jerusalem mustn't be changed in any form.
- **United Nations Security Council resolution 446**¹¹, adopted on 22 March 1979:
 - In the Resolution, the Security Council determined: "that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East"

⁸<https://unispal.un.org/DPA/DPR/unispal.nsf/0/46f2803d78a0488e852560c3006023a8>

⁹<https://unispal.un.org/DPA/DPR/unispal.nsf/0/5932ecf53ff36a04852560c300656122>

¹⁰<https://unispal.un.org/DPA/DPR/unispal.nsf/0/441329a958089eaa852560c4004ee74d>

¹¹<https://unispal.un.org/DPA/DPR/unispal.nsf/0/BA123CDED3EA84A5852560E50077C2DC>

- Resolution 446 affirms "once more that the [Fourth Geneva Convention](#)¹² relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem".

- **Resolution 465¹³ (1980):** *Adopted by the Security Council at its 2203rd meeting on 1 March 1980:*

Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

- **UNSC Resolution 476¹⁴**(30 June 1980), reaffirmed former resolutions that the Israeli measures in changing the legal, demographical and geographical status quo of Jerusalem are void. This resolution considered Israel unbinding with the relevant UNSC/ UNGA resolutions as a clear violation of the Geneva Convention (12 August 1949) that observes the protection of civilians in a situation of war.
- **UNSC Resolution 478¹⁵**(20 August 1980) came after the Israeli Knesset activated the basic law of considering Jerusalem as the capital of Israel, this UNSC resolution clearly forbids any foreign

¹²ICRC, 1949. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva. [Online]
Available at: <https://ihl-databases.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

¹³<https://unispal.un.org/DPA/DPR/unispal.nsf/0/5AA254A1C8F8B1CB852560E50075D7D5>

¹⁴<https://unispal.un.org/DPA/DPR/unispal.nsf/0/6de6da8a650b4c3b852560df00663826>

¹⁵<https://unispal.un.org/DPA/DPR/UNISPAL.NSF/0/DDE590C6FF232007852560DF0065FDDB>

diplomatic representation in Jerusalem, and it rejects the Israeli law. It demanded all member states to accept this resolution and requested all member states to withdraw their diplomatic missions from occupied Jerusalem.

And very recently **Resolution 2334**¹⁶(December 23rd. 2016)

The Security Council reaffirmed that Israel's establishment of settlements in Palestinian Occupied Territory since 1967, including East Jerusalem, had no legal validity, constituting violation under international humanitarian law, Israel obligations as the occupying power according to the Fourth Geneva Convention, and previous UN resolutions law.

The Council reiterated its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem. The resolution underlines that the Security Council "will not recognize any change to the 4 June 1967 lines, including with regard to Jerusalem.

Furthermore, the UN General Assembly approved in its emergency special session that was held on the 21stDecember 2017, a rejection of all of the Israeli former and present practices and measures that changed the legal status quo of Jerusalem, especially the demographic balance. And it demanded all member states to refrain from opening diplomatic missions in the holy city in accordance with the UNSC resolution 478 of 1980¹⁷. It is known that the UNGA special emergency sessions have the same legal weight of article six of the UNSC.

Recently, on the 14th May 2018, the United States of America transferred its embassy to Jerusalem in violation of all of the

¹⁶UNSC, 2016 . *Resolution 2334 (2016)*. [Online]
Available at: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

¹⁷<https://www.un.org/press/en/2017/ga11995.doc.htm>

international resolutions, including resolution 478 (1980), and the many UNSC/UNGA resolutions that prohibit changing the legal status quo of Jerusalem prior to 1967, in a step that contradicts the US claim that it is a fair mediator to achieve peace between the Palestinians and Israelis.

To conclude, the status of Jerusalem under the international law is still defined and ruled by the UNGA Resolution 181 as an area of non-sovereignty, under international supervision.

All laws, administrative regulations, and measures legislated, issued or done by Israel by the force of military occupation of Jerusalem are and in violation of the UN Charter, Geneva Fourth Convention of 1947, and all successive relevant Security Council resolutions. All Israeli measures in city are null and void.

Palestine has a valid claim to sovereignty over the city based on the fact that under the Ottomans and during the British Mandate, Jerusalem was an integral part of the territory of Palestine and was its administrative capital. Palestinian Arabs were the overwhelming majority of the population until the Jewish immigration altered the demographic structure of the city.

On the other hand, the Israeli claim to sovereignty over Jerusalem has no basis in UN General Assembly Resolution 181 since the resolution never envisaged that Jerusalem would form part of the proposed Jewish state, but a *corpus separatum* subject to international regime¹⁸.

Furthermore, Israel did not claim sovereignty over Jerusalem in the Oslo Declaration of Principles, September 1994, and the Interim Agreement, and admitted that Jerusalem is an issue of final status negotiations whereas its status will be determined through negotiations with the PLO.

¹⁸Fouloy, C. D. D., 2017. *Association of Accredited Public Policy Advocates to European Union*. [Online] Available at: <http://www.aalep.eu/jerusalem-under-international-law>

Jerusalem is, from the international law perspective, an area under international administration until an agreement is agreed upon between Israel and Palestine, based upon ending the Israeli occupation of the Palestinian land, and guaranteeing the Palestinian national rights in Jerusalem as the capital of Palestine.